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6/8/22 3:46 pm
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

IN RE: . Case No. 22-20823-GLT
.
U LOCK, INC., a/k/a . 5414 U.S. Steel Tower
U-LOCK, INC., . 600 Grant Street
.
Debtor. . Pittsburgh, PA 15219
.
June 2, 2022
9:19 a.m.

TRANSCRIPT OF #14 EXPEDITED MOTION TO DISMISS CASE,
IN ADDITION TO MOTION FOR SANCTIONS AGAINST PETITIONING
CREDITOR, OR IN THE ALTERNATIVE MOTION FOR RELIEF FROM STAY FEE
AMOUNT, OR IN THE ALTERNATIVE MOTION TO ABANDON THE MOVANTS
PROPERTY FILED BY CHRISTINE BIROS

BEFORE HONORABLE GREGORY L. TADDONIO
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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For Christine Biros: Bernstein-Burkley, P.C.
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Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

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1 THE COURT: Okay. We are here on the matter of Case
2 Number 22-20823, U-LOCK, Inc., and I'll take appearances first
3 for the moving party, Christine Biros.

4 MS. Wenrich: Good morning, Your Honor. Sarah
5 Wenrich here on behalf of Christine Biros. I also have William
6 Otto here who is lead counsel in the State Court action and Ms.
7 Biros is here as well.

8 THE COURT: All right. Good morning.

9 All right. And I'll take an appearance over here.

10 MR. ROTH: Allen Roth, I'm here on behalf of U-LOCK
11 and one of the officers of that corporation is George Snyder
12 who is here as well.

13 THE COURT: All right. Good morning.

14 All right. That's the appearances here in the
15 courtroom and I'll take any appearances via Zoom.

16 (No audible response)

17 THE COURT: It appears that we have someone on a
18 phone that's on mute, so if you could unmute yourself please?

19 MS. SNYDER: Can you hear me? It's Shanni Snyder.

20 THE COURT: Okay. I can hear you now.

21 MS. SNYDER: Okay, sorry. Thank you. It's Shanni
22 Snyder appearing for myself.

23 THE COURT: All right. Ms. Snyder, do you have video
24 on your phone?

25 MS. SNYDER: I don't, it's not working. I had

1 trouble getting on this, they had to give me the numbers.

2 THE COURT: All right. Well, I'll advise you that my
3 procedures are that when you participate by Zoom you are
4 required to have your video on. So if you are having issues
5 with your phone, then we'll have to do one of two things if
6 there are any future hearings on this, which is to either have
7 that corrected with a different device to appear by video or to
8 personally appear here in the courtroom.

9 MS. SNYDER: Okay. Yes, I did call your chambers and
10 tell them I was having difficulty and they sent a number and
11 then -- yes, they said that I couldn't do it by the phone.

12 Okay, understood. Thank you, Your Honor.

13 THE COURT: All right. Okay. We are here on an
14 expedited motion to dismiss this case. This was a case
15 commenced through an involuntary petition filed by petition
16 filed by Ms. Smith (sic).

17 So with that, we'll begin with the moving party,
18 Attorney Wenrich.

19 MS. WENRICH: Good morning again, Your Honor. One
20 thing I just want to note for the record at the outset, we do
21 have some concerns whether Ms. Snyder is by herself on the
22 phone, which is one reason we were hoping she would be here or
23 be on video, because we do have reason to believe that she may
24 have had assistance with her pleading and, given that she's not
25 visible, raises our concerns again. So --

1 THE COURT: Well, this is a non-evidentiary hearing
2 and it's set on an emergency basis so I am prepared to give
3 some leeway for today but I'm making it clear that no such
4 leeway will be extended at any other proceeding.

5 MS. WENRICH: Understood. Thank you, Your Honor.

6 So just to start and give you a little bit of
7 background, and I think our pleading does give some background,
8 but this is an ongoing issue. This lawsuit in the State Court
9 action was originally filed by Ms. Biros in 2017 seeking
10 declaratory judgment that she owned the property. Two years
11 later the Common Pleas Court wrote two different opinions
12 finding that she was the rightful owner. U-LOCK appealed that
13 to the Superior Court, they affirmed, and it was appealed to
14 the Supreme Court, which declined to hear the matter, thereby
15 affirming the Court of the Common Pleas and the Superior Court,
16 both of which determined that Ms. Biros was the lawful owner.
17 The deeds are dated May 2019. They were recorded January 2022,
18 as soon as the Supreme Court declined to hear the matter.

19 The property has significant environmental concerns.
20 They need to be addressed and the debtor has failed to address
21 these concerns. Ms. Biros has reason to believe that the
22 debtor is actually continuing to cause additional environmental
23 concerns. The recent truck fire incident that the debtor
24 refers to, there are eyewitnesses there which --

25 THE COURT: Garbage truck fire?

1 MS. WENRICH: I don't believe so.

2 THE COURT: This is a different fire?

3 MS. WENRICH: It's referred to as the garbage truck
4 fire but there were eyewitnesses there who did not see a fire,
5 instead just saw a truck dumping soil. That soil has been
6 tested and we don't have the full tests back yet but the
7 preliminary tests show that the soil actually contained PCBs
8 and if a fire had actually occurred with that contaminated soil
9 the situation would be much different. There would have been
10 parties with substantial protective gear and we just have
11 reason to believe that the facts as alleged in the declaration
12 and in the motion -- or in the response are just inaccurate.
13 The code enforcement officers have been involved to inspect
14 those events and at this point it's crucial that my client be
15 able to execute the writ of possession and to dispossess the
16 debtor to prevent further harm to the property.

17 THE COURT: Well, let's talk about the writ of
18 possession. I'm interested in the circumstances by which that
19 was issued. I want to understand the time frame of events here
20 because it wasn't entirely clear to me from the papers. I
21 understand there was a hearing on April 13th, 2022 in the State
22 Court.

23 MS. WENRICH: I believe it was April 20th --

24 MR. OTTO: Twenty second.

25 MS. WENRICH: -- or 22nd, sorry.

1 THE COURT: Okay, April 22. And there was no order
2 issued related to that hearing until May 13th, is that correct?

3 MS. WENRICH: My understanding is that the order was
4 issued but not signed until May 13th so I do believe that --

5 THE COURT: Okay, but it's not an effective order
6 until May 13th?

7 MS. WENRICH: Correct.

8 THE COURT: But the petition was filed on April 27th?

9 MS. WENRICH: Yes, Your Honor.

10 THE COURT: So how is that a valid writ of
11 possession?

12 MS. WENRICH: So we believe it's a valid writ of
13 possession because we don't believe that the property is the
14 property of the estate in --

15 THE COURT: That makes no difference here. I mean,
16 whether or not the property is property of the estate the
17 debtor still has possession of the property.

18 MS. WENRICH: That's true, Your Honor, but because we
19 believe that 362(b)(10) is applicable to the scenario here --

20 THE COURT: Where's there a lease?

21 MS. WENRICH: So there is no lease and --

22 THE COURT: But how is that statute applicable here?

23 MS. WENRICH: So we still believe it's applicable.

24 You know, looking at the case that was cited by Ms. Snyder, the
25 1990 case in the Third Circuit, that case found that mere

1 possession was sufficient to deem the debtor in possession of
2 the property and that it was property of the estate and the
3 debtor could not be evicted. However, since then, I mean, that
4 was 32 years ago and there are cases since then that have
5 narrowed that holding significantly such that a tenant at
6 sufferance or a holdover tenant, that is not -- their
7 possession of that property and their occupancy of that
8 property is not property of the estate such that the tenant
9 would allow the rightful owner to come in. There was a case in
10 --

11 THE COURT: Well, does the debtor also have personal
12 property on the site?

13 MS. WENRICH: We don't know that the debtor does but
14 that's something I know that Ms. Biros has made clear in other
15 hearings in other courts, that we're not seeking to dispossess
16 the debtor from any ownership of their personal property and it
17 would be available to --

18 THE COURT: The writ of possession would seemingly do
19 that.

20 Let me just say this. I was actually -- well, again, let me go
21 back to the time frame because it's not clear to me. There was
22 a hearing on April 22nd, there was an order involving the writ
23 of possession on May 13th and then there was a subsequent
24 hearing on May 20th?

25 MS. WENRICH: I believe that's --

1 MR. OTTO: That's correct.

2 THE COURT: And then was there another order that's
3 come out from that May 20th hearing?

4 MS. WENRICH: I don't believe so.

5 MR. OTTO: No.

6 THE COURT: All right. I can tell you that I was
7 actually somewhat surprised when I read the transcript of some
8 of these proceedings and to understand the rationale given for
9 proceeding with the writ of possession in light of knowledge of
10 a pending bankruptcy case. So right now I'm questioning why I
11 should not just render that order void as a violation of the
12 stay?

13 MS. WENRICH: I understand your concerns and --

14 THE COURT: And then secondly, I have concerns with
15 what I read in the transcript about attempts to continue to
16 pursue assets or pursue remedies against the debtor with full
17 knowledge of the bankruptcy, so why don't I have a willful
18 violation of the stay here?

19 MS. WENRICH: Your Honor, I don't think there's a
20 wilful violation of the stay because --

21 THE COURT: Well, I certainly have knowledge, do I
22 not?

23 MS. WENRICH: Yes.

24 THE COURT: And then I have actions that are taken
25 that would seemingly be inconsistent with the stay?

1 MS. WENRICH: Your Honor, could you clarify which
2 actions in particular you're talking about?

3 THE COURT: Well, I have a creditor seeking a writ of
4 possession after the bankruptcy had commenced and asking the
5 Court to entertain additional orders that would seemingly
6 advance their rights as against the debtor or the debtor's
7 assets.

8 MS. WENRICH: So with those in particular I think
9 that, to the extent that it is a violation of the stay, I would
10 assert that it's not a wilful violation of the stay for the
11 reasons that I explained before, which is that the property is
12 not property of the estate and the debtor does not have a legal
13 right to be on that property such that it would not be brought
14 into property of the estate to which the automatic stay would
15 apply.

16 THE COURT: Well, I want to be clear on two things.
17 One is we're talking about title and title is completely
18 different from possessory interests. So from what I've seen on
19 the record and the court decisions it appears there's no
20 question at this point that Ms. Biros has title to the property
21 based on the rulings that went from the Court of Common Pleas
22 all the way up through the Superior Court and were disposed of
23 as a final order, but that does not equate to possession. And
24 my understanding is there's no dispute that U-LOCK still has
25 possession and U-LOCK still has the potential for having assets

1 on that location that would be divested through any action that
2 would be taken through the sheriff of Westmoreland County.

3 MS. WENRICH: Your Honor, I think with regard to
4 possession though, I still think that since that Atlantic
5 Business and Community Corporation case was decided, that just
6 mere possession on the property without good faith colorable
7 claim for possession does not equate to property of the estate.
8 I did find a --

9 THE COURT: Why didn't you take a more proactive role
10 of seeking stay relief before going to State Court and getting
11 this relief?

12 MS. WENRICH: Your Honor, we were involved shortly
13 after the bankruptcy was filed, after the suggestion of
14 bankruptcy was filed. I believe that we were at a little bit
15 of a loss. We tried to get things as quickly as possible in
16 front of Your Honor given the time required to get this all
17 together and really get a full review of what was going on
18 since this has been pending for five years. So I think that
19 we have not acted on the writ of possession, the Court issued
20 it but there has been no further action, and I want to be very
21 clear that we have instead --

22 THE COURT: Well, I mean, again, I come back to the
23 writ is not -- it says that such writ will authorize levy and
24 sale of any property of defendant, U-LOCK -- of U-Lock. I
25 mean, that's fairly sweeping and I just -- I don't know how

1 that can stand.

2 MS. WENRICH: Then Your Honor, I think maybe my
3 suggestion would be that, again, understanding that that is
4 what the writ says and I can acknowledge that, would there be a
5 possibility for an agreement to not do that because it does
6 violate the stay and instead obtain possession of the property
7 and allow the debtor to collect any of its property that is on
8 --

9 THE COURT: Well, if the parties can reach an
10 agreement on that I think that's perfectly fine. The one thing
11 though I am a little more concerned about and I'd like to you
12 address now is more about this environmental issue and whether
13 there are, you know, there's reference to pending Code
14 violations. You've included an environmental report so I am
15 interested in hearing from your client as to the nature and
16 condition of the property and any exigent circumstances that
17 requires court involvement at this time, and I'll certainly
18 want to hear from U-LOCK on this as well.

19 MS. WENRICH: Your Honor, would I be able to pass
20 this onto my co-counsel --

21 THE COURT: All right.

22 MS. WENRICH: -- for that question?

23 THE COURT: You may.

24 MR. OTTO: Good morning, Your Honor. First of all,
25 with respect to the environmental condition of the property,

1 regardless of any assertions as to how the property got to the
2 condition it was in at the time we initially had an engineer
3 look at it, there is still an engineer's report, which I
4 believe Ms. Wenrich has provided to the Court, that
5 demonstrates that there are -- there's extensive broken down
6 cars, tires, storage tanks, evidence of hydrocarbon
7 contamination in the soil. All of those things were evident in
8 2019. And so within the last month I visited the site with Ms.
9 Biros, as well as our environmental engineer and he looked at
10 the site and provided an update which basically said the
11 condition hasn't improved at all or substantially has not
12 improved.

13 THE COURT: Are there actions at this point that your
14 client seeks to take to address the environmental issues with
15 respect to the property?

16 MR. OTTO: Yes.

17 THE COURT: And what are those?

18 MR. OTTO: Our plan is to have the cars removed and
19 have them -- a car -- a junk -- a car dealer come in and take
20 the cars off the site and dispose of them. If they're owned by
21 anybody the junk dealer will know how to deal with the title,
22 dispose of the tires and have them recycled. Our initial plan
23 is to do a Phase 1 site assessment to make sure that we can
24 characterize the entire situation in detail, and then our long
25 range plan is to clean the site up so that it can be used as a

1 commercial site and not as a junkyard.

2 Now as far as --

3 THE COURT: But your understanding is these cars are
4 not property of U-LOCK they're --

5 MR. OTTO: I don't believe they are. They've
6 indicated as much in their pleadings as well in the Court of
7 Common Pleas that they are not.

8 THE COURT: Okay.

9 MR. OTTO: As far as the PCB contamination, I believe
10 on Monday of last week one of the supervisors or commissioners
11 of North Huntingdon Township happened to drive by the site and
12 saw a truck -- a three axle truck dumping dirt on the site, and
13 he didn't -- he's an Army major and very observant. He has
14 reason to be concerned about the site because he's got citizens
15 of his district complaining to him about it because it's such
16 an eyesore and so he's sensitive to it. He drove by it and saw
17 the trucks. Later the next day my client's father visited the
18 site and saw that there had been soil smoothed out and there --
19 much -- a lot of it was dark right -- dark soil right at the
20 entrance, and as a result of that I got a call and I called our
21 environmental engineer. And I then called the North Huntingdon
22 Township code enforcement officer, didn't reach him so I called
23 the commissioner. His name is Major Eric Gass, G-a-s-s. I
24 called him and he and Ms. Biros went to the site and they --
25 and she -- he indicated that the soil had a chemical smell to

1 it, so on that basis I called our environmental engineer back
2 and asked him to have one of his technicians go over and take
3 soil samples. They went over, they took the soil samples. We
4 did what's called a broad spectrum analysis of it and indicated
5 that there is at least PCBs in the soil that was placed on the
6 site.

7 THE COURT: Okay.

8 MR. OTTO: Now, my client's plan is to have that
9 removed and properly disposed of, but obviously we don't know
10 how extensively it was spread.

11 THE COURT: All right. Thank you.

12 MR. OTTO: Now, one other comment just so you're
13 aware, Your Honor. All through this trial, over the last five
14 years, it has been asserted by U-LOCK that they don't have any
15 money, that there's no money in the corporation, and on that
16 basis our attitude is they're not going to clean it up.

17 THE COURT: No, I understand.

18 MR. OTTO: If anybody's going to clean it --

19 THE COURT: I think I've got a good feel on the
20 environmental issue at this point --

21 MR. OTTO: All right.

22 THE COURT: -- so thank you.

23 MR. OTTO: Thank you, Your Honor.

24 THE COURT: One final question, Ms. Wenrich, is that
25 -- so at this point U-LOCK has not filed its answer to the

1 involuntary petition and suggested it possibly is considering
2 conversion to 11 --

3 MR. OTTO: Excuse me, if I may? One other --

4 THE COURT: Well, you'll need to be in front of the
5 microphone.

6 MR. OTTO: I'm sorry, one other item. Because we had
7 contact with the supervisor, or one of the supervisors, of
8 North Huntingdon Township, we asked him to determine whether U-
9 LOCK had an occupancy permit for the site and he has informed
10 us that they do not. So they've been on the site since 2015
11 without an occupancy permit which means, aside from our
12 ownership, they shouldn't even be on the site.

13 THE COURT: Okay. Well, my initial question is, you
14 know, I've got -- U-LOCK has an answer date of I think June
15 13th for this and U-LOCK is suggested as potentially -- well,
16 U-LOCK has admitted it's insolvent. U-LOCK is contemplating
17 converting it to a 11, or perhaps considering staying in a 7,
18 but why should I not -- why should I rule now on this as
19 opposed to wait for that answer and determine whether or not
20 this case stands on its own two feet separate and apart from
21 what Ms. Smith (sic) has initiated through her involuntary
22 petition?

23 MS. WENRICH: Respectfully, Your Honor, I think that
24 with respect to the involuntary as opposed to if U-LOCK would
25 unilaterally decide to file a petition under either under a 7

1 or 11, there are different remedies under Section 303 of the
2 Bankruptcy Code that at this point are very important to my
3 client.

4 THE COURT: Well, I'm not saying that I'm
5 forestalling those. What I'm saying part of it makes sense to
6 me is to kind of get a feel for a lay of the land after I get
7 their answer. Now, the reason I asked about the environmental
8 is that that sounds like that's an exigent circumstance for
9 which I may be inclined to grant stay relief today on that.
10 But as to some of these other issues, I think I need to let the
11 record play itself out a little bit so I'm just asking why I
12 should make a decision on the dismissal motion today given that
13 I have U-LOCK with the opportunity to file a response to
14 consent to the bankruptcy at this point?

15 MS. WENRICH: I think first and foremost, as long as
16 we have some indication that we may be able to proceed and have
17 relief from stay to deal with some of these issues, that is our
18 biggest concern and that is why we sought the relief. I
19 understand we asked for a number of different areas of relief,
20 part of that was just because, again, we were at a loss and we
21 do think that all of these claims for relief are valid. But if
22 Your Honor is thinking or inclined to push off the motion to
23 dismiss and possible sanctions until a later time, I don't
24 think we would have a problem with that. I would be willing to
25 handle that at a later date and handle that argument at a later

1 date, but it is really important for us that we be able to
2 proceed with the disposition of the property and start handling
3 those environmental issues immediately.

4 THE COURT: Okay. All right. Thank you.

5 All right. Ms. -- I'm sorry, Ms. Smith -- I'm sorry,
6 Ms. Snyder.

7 Ms. Snyder, you filed this involuntary and it's been
8 raised in the papers that your claim is based on a wage and
9 hour judgment that you obtained in District Court, is that
10 correct?

11 MS. SNYDER: Correct.

12 THE COURT: All right. So that is the claim that
13 you're using to initiate this bankruptcy proceeding?

14 MS. SNYDER: Correct.

15 THE COURT: And my understanding from the papers is
16 that that derives from wage claims that you had against U-LOCK
17 dating back to 2016, is that correct?

18 MS. SNYDER: Correct. Yes, it was --

19 THE COURT: And my understanding is that you filed
20 your own Chapter 7 bankruptcy case in 2018, is that correct?

21 MS. SNYDER: Correct.

22 THE COURT: It's my understanding you did not
23 disclose that claim on your Chapter 7 bankruptcy petition?

24 MS. SNYDER: It's correct that I didn't -- I did omit
25 it under ignorance.

1 THE COURT: All right.

2 MS. SNYDER: Because I wasn't receiving any money.

3 THE COURT: Now that you are aware of it and you
4 became aware of it, did you inform your Chapter 7 trustee,
5 Charles Zebley, about the claim?

6 MS. SNYDER: No, I thought that maybe we would open
7 it today back up, that she could file a motion --

8 THE COURT: All right. Is there a reason why you did
9 not inform him before you commenced the District Court action?

10 MS. SNYDER: No, I didn't know that --

11 THE COURT: Right. And how is it that you have
12 standing to bring this claim then?

13 MS. SNYDER: Because I have the judgment and I filed
14 it.

15 THE COURT: Doesn't that claim belong to your
16 bankruptcy estate or at least the portion --

17 MS. SNYDER: Yes.

18 THE COURT: -- running up to 2018?

19 MS. SNYDER: Yes, and I'd be willing to open it back
20 up if that is what the remedy is here.

21 THE COURT: Well, the problem that we have here is
22 this is not your claim, at least the substantial portion of it
23 is not your claim. It belongs to your bankruptcy estate so
24 therefore --

25 MS. SNYDER: Okay.

1 THE COURT: -- your Chapter 7 trustee is the one that
2 has to proceed on this claim.

3 MS. SNYDER: Okay.

4 THE COURT: So part of the reason why I'm thinking
5 I'm not able to proceed with this today is that I am missing an
6 indispensable party, which would be Trustee Zebley.

7 MS. SNYDER: Okay.

8 THE COURT: But just because you have a claim does
9 not mean you are able to run into court yourself and prosecute
10 that claim if it belongs to your bankruptcy estate, I want to
11 make sure we're clear on that.

12 MS. SNYDER: Okay.

13 THE COURT: So there is a question about the validity
14 of that judgment and obviously the estate has an interest in it
15 and perhaps the estate wishes to ratify the actions that you've
16 taken but at this point I'm hearing that Mr. Zebley is
17 completely unaware of this claim.

18 MS. SNYDER: Okay. Well, like I said, I did omit it
19 just because I didn't consider it income at the time because it
20 wasn't income, so I didn't have --

21 THE COURT: Well, you made a claim for lost income.

22 MS. SNYDER: Yes, but that was after the fact that I
23 -- I mean, I filed my bankruptcy in 2018. I didn't even
24 consider it because there was no money there, I didn't receive
25 money so I understand it has to be opened back up and then I

1 have to let him know. I didn't know if he would have filed a
2 motion today or she would file a motion to open it back up?

3 THE COURT: Well, I'm going to direct that you inform
4 Trustee Zebley and I will have a copy of my order sent to him
5 so that he is aware of this and has an opportunity to appear at
6 the next hearing that we have on this matter.

7 MS. SNYDER: Okay. Thank you, Your Honor.

8 THE COURT: But I'd also like to know at this point,
9 just preliminarily, how it is that you do not qualify as an
10 insider of U-LOCK based on your relationship with Mr. Snyder?

11 MS. SNYDER: Well, because -- just because we're
12 family doesn't mean I don't qualify.

13 THE COURT: Well, are you suggesting --

14 MS. SNYDER: I have --

15 THE COURT: -- a different reading of the Bankruptcy
16 Code in terms of what the term relative means?

17 MS. SNYDER: No.

18 THE COURT: All right. Anything else you wish to
19 raise in connection with this motion to dismiss at this stage?
20 As I indicate, I'm not ready to make a final ruling on it at
21 this point but anything else you wish the Court to consider?

22 MS. SNYDER: Well, they did do this as an emergency
23 motion which is very difficult, you know, that she makes all
24 these arguments after arguments, nothing simple, and then I had
25 to rush for the response. So you know, it would be better if

1 there were timelines --

2 THE COURT: Well, I can tell you your response was
3 very thorough and very comprehensive, and contained significant
4 amount of legal authority. I'm assuming you have the ability
5 to conduct legal research based on what's in your written
6 response?

7 MS. SNYDER: Yeah, but it's still very difficult for
8 me. And I tried to get two attorneys to go to this hearing
9 with me today and everybody needs time. And it just -- they've
10 done this since -- they're saying the environmental issue,
11 they've done this since 2018, this is an emergency today, and I
12 just I would like things to run on schedule how they would so I
13 can get my attorney.

14 THE COURT: Well, I mean, do you have a reason to
15 dispute the environmental issues that have been raised in the
16 papers and in the hearing today?

17 MS. SNYDER: Well, they've been saying that since
18 2018 and if they had possession, you know, it's Christina Biros
19 that is a creditor, it's me, it's -- there's other tenants on
20 there, just the more liability the less chances I would be able
21 to collect on my judgment. So you know, they have been saying
22 that in State Court since 2018, what's the difference between
23 now and then that this was an emergency? She's just trying to
24 get preference to be the only creditor. Once they lock all the
25 other tenants out, then there would be more creditors, so that

1 will be, you know, more liability. So, yeah, I think this is
2 just an old, you know, excuse about the environmental. You
3 know, the possession doesn't affect me but it will affect my
4 judgment.

5 THE COURT: All right. Thank you. Mr. Roth --

6 MR. ROTH: Yes.

7 THE COURT: -- do you wish to be heard? And if so,
8 you can either come to the podium or you can stand there and
9 just have a microphone next to you, whatever you prefer.

10 MR. ROTH: If I could first address Your Honor about
11 the truck that was there apparently putting things on the
12 property. What happened with that truck is it was carrying old
13 cartons, cardboard cartons, okay. Somebody had flipped a
14 cigarette butt into the cartons and it caught on fire and what
15 happened was the police and the fire department were both
16 called because there was a fire going on there. And so what
17 happened was they dumped all the materials out onto the
18 property and then they came back the next day to pick up all
19 the materials that had fallen out. So that's what happened
20 there, so I don't know anything about any dirt or anything like
21 that being put out there. It was all from the cardboard
22 cartons burning.

23 THE COURT: All right. The vehicles that are on the
24 property, are those the debtor's assets or are they third party
25 assets?

1 MR. ROTH: They are third party asset. They don't
2 own any of those vehicles.

3 THE COURT: So there's no issues with the removal of
4 those items?

5 MR. ROTH: And they've contacted the police several
6 times about tagging those vehicles --

7 THE COURT: I read that.

8 MR. ROTH: -- so that they can get them removed and
9 they're in the process of making -- I think he's going today to
10 talk to the police again to try to get those vehicles tagged
11 because he's going to get them out of there.

12 THE COURT: All right. So there's no issue with that
13 at this point?

14 MR. ROTH: No, I don't believe so.

15 THE COURT: All right. So what I'm dealing with
16 right now is Ms. Biros has been determined by State Court to be
17 the owner of that property at this point and so my concern
18 right now immediately is what actions need to be taken in order
19 to properly protect and preserve the asset during this time
20 period and my question to you is, what is the debtor's --
21 alleged debtor's position with respect to limited stay relief
22 to afford her the opportunity to take those corrective actions
23 at this point?

24 MR. ROTH: We believe this property is worth
25 somewhere about \$2 million.

1 THE COURT: All right.

2 MR. ROTH: And if they would take normal collection
3 activity in this case like we'd normally do --

4 THE COURT: All right. But you're asking me to go
5 back and undo the State Court judgment, I'm not doing that.
6 That's a Rooker-Feldman issue and property interests are
7 determined based on state law so I am going with what is a
8 final order in State Court that says she is the owner of the
9 property.

10 MR. ROTH: I understand that. Well, we believe that
11 that order is one that could be overturned, okay. Because we
12 don't think --

13 THE COURT: Okay, but my understanding is you've
14 exhausted your appeals.

15 MR. ROTH: We don't -- well, we believe the judge
16 took action after the automatic stay had been imposed here.

17 THE COURT: Well, that's a separate issue.

18 MR. ROTH: Yes.

19 THE COURT: Actions that were taken in violation of
20 the stay are something that I'm fully capable of addressing and
21 will address here but ownership of the property seems to be a
22 settled issue at this point.

23 MR. ROTH: Well -- and I understand that.

24 THE COURT: I mean, you can tell me if there's
25 something I'm missing but I'm seeing that you've gone all the

1 way up through the appellate chain and there's nothing to
2 suggest that you prevailed on that so I'm understanding that
3 she's the owner of the property at this point.

4 MR. ROTH: Well --

5 THE COURT: So the question I'm really having is, why
6 should I not allow the owner to take protective measures to
7 protect her interest in the property?

8 MR. ROTH: Well, my reasoning behind that would be
9 because of the value of the property. And she can certainly --
10 if my client continued to own that property, regardless of what
11 the courts have said, if he continued to own that property --

12 THE COURT: Regardless of what the courts have said?
13 I mean, that's why have courts.

14 MR. ROTH: Right.

15 THE COURT: You know, the courts make decisions and
16 unfortunately the court issued a decision that was adverse to
17 your client and you have to come to terms with that, your
18 client has to come to terms with that, and now we move on.
19 You're not going to relitigate that issue in this court.

20 MR. ROTH: Well, I --

21 THE COURT: I mean, if your client needs bankruptcy
22 relief, that's what I'm here for and I will deal with the
23 assets that are a part of this estate but right now I'm not
24 seeing anything that suggests that this real property that was
25 subject to Judge Smail's opinion is part of this estate. You

1 may have -- your client may have a possessory interest in it,
2 your client may have personal property there but, in terms of
3 real property, based on what I've seen so far, that's a settled
4 issue.

5 MR. ROTH: Well, if it's a settled issue, I mean, how
6 can I argue that? If it's settled, I --

7 THE COURT: Well, I'm just -- I'm perplexed at how
8 you're arguing to me that it's not a settled issue. Tell me
9 why it's not a settled issue.

10 MR. ROTH: Can I have one second?

11 THE COURT: Mm-mm.

12 MR. SNYDER: Your Honor?

13 THE COURT: You can consult with your counsel but he
14 will be the one making the presentation.

15 (Attorney/client discussion)

16 MR. ROTH: Well, I would say, Your Honor, at the time
17 this loan was made to U-LOCK the condition of the property was
18 the same then that it is right now, okay, and --

19 THE COURT: Why should Ms. Biros be prevented from
20 taking actions that would clean up the property and ostensibly
21 enhance its value which would benefit all involved?

22 MR. ROTH: Well, yes.

23 THE COURT: All right.

24 MR. ROTH: That's why we would like -- we were
25 wanting U-LOCK to be able to do all that, because they were in

1 the process of making of all that happen. That's why he has
2 met with the police to come out, like today, to come out and
3 get rid of all these cars because they're trying to make that
4 happen. And they're not trying to cheat Ms. Biros, they're
5 just -- they would like to have this property be able to pay
6 itself off and to pay all the creditors and all the people that
7 do rentals from U-LOCK, okay. None of those people have been
8 advised about any of these proceedings at all, okay, and we
9 think that would have been essential, is that all these people
10 would have been advised so that they could have had a say in
11 what actually happened in all the proceedings before the court.

12 THE COURT: Okay. Look, like I said, we're at the
13 very early stages of this bankruptcy case. You have not yet
14 even filed an answer to indicate on behalf of U-LOCK whether
15 you consent to entry of an order for relief and whether we will
16 proceed as a Chapter 7 or a Chapter 11. I don't even have --
17 and until the order for relief is entered, I won't -- don't
18 even have the listing of creditors so that they can get notice.
19 So we are not yet at that point. But what I've said is, I'm
20 not prepared to dismiss the case today based on a number of
21 issues and we'll have an opportunity to revisit whether this
22 bankruptcy case can continue. But right now I'm left with the
23 fact that if I've got a festering environmental issue, I don't
24 see the harm of having that remediated as soon as possible. At
25 this point, notwithstanding whether or not it happened four

1 years ago or yesterday, it's something that obviously it would
2 seem best to continue efforts to do so, so why is that a bad
3 idea?

4 MR. ROTH: U-LOCK has been improving this property
5 the whole time. When they first got the property there was 600
6 tires on the property, there's now 300 tires because they've
7 been --

8 THE COURT: Okay.

9 MR. ROTH: -- remedying all the issues with regard to
10 the environmental issues, so it's not like they haven't been
11 doing anything about it. And they've been trying to work on
12 getting rid of some of the cars, like, by notifying some of the
13 owners of the cars to get them out of there but there are some
14 that are just abandoned so those are what we're trying to get
15 tags so that they can get them out.

16 THE COURT: Okay. But she is the property owner so
17 she should be able to be involved in that process as well.

18 All right. Any further --

19 MR. ROTH: My client would like to talk to me for
20 like two minutes, if we could

21 THE COURT: All right. You can --

22 MR. ROTH: -- do that?

23 THE COURT: Why don't you do that away from the
24 microphone so that it's not --

25 MR. ROTH: Thank you.

1 (Attorney/client discussion)

2 THE COURT: All right. Any closing remarks, Mr.
3 Roth?

4 MR. ROTH: Well, he wants me to let you know with
5 regard to the truck and the fire, that the truck that caused
6 that fire is the Bigs Company and --

7 THE COURT: What company?

8 MR. ROTH: Bigs, B-i-g-s.

9 THE COURT: Okay.

10 MR. ROTH: And that had nothing to do with U-LOCK,
11 they just happened to be driving by and got a fire in their
12 truck. And their protocol is, once you get a fire, you stop
13 and dump and that's what they did. They just happened to do it
14 on this property, okay, but he wants you to understand that.

15 In addition to that, he wants you to understand that
16 some of the vehicles that are on this property are actually
17 salvageable and are worth money, maybe 20, 30 thousand dollars,
18 and they would like to be able to have those cars in their
19 possession so that they can dispose of them and get some money
20 out of them in the future.

21 THE COURT: So you are claiming that those are assets
22 of this estate?

23 MR. ROTH: Some of them, not all of them but some of
24 them.

25 THE COURT: Is there an understanding of which ones

1 are and which ones are not?

2 (Attorney/client discussion)

3 MR. ROTH: Well, there's actually bulldozers and
4 cranes and things of that nature there too, which would belong
5 to U-LOCK. But not all the cars are -- belong to U-LOCK. Some
6 of them were just abandoned there.

7 THE COURT: All right. Anything further you want the
8 Court to consider at this point?

9 MR. ROTH: Well, they plan on removing the remainder
10 of the tires within a week, that's where they're at now.

11 THE COURT: All right. Is there any reason why the
12 parties can't consensually work out a plan to do this
13 environmental remediation?

14 MR. ROTH: Well, let me say I would like to do that.
15 If we can find a way to make that happen we would like to do
16 that, yes.

17 THE COURT: Okay. All right. Well, I mean based on
18 what I've heard though Ms. Biros is the owner of the property.
19 The property is not currently property of this bankruptcy
20 estate and there are pending environmental issues, so that's
21 enough of a basis for me to grant her limited stay relief as to
22 that. If the parties can work out a consensual arrangement
23 where the debtor does that work, then I'm fine with that but,
24 as the owner of the property, she can, you know, have the stay
25 relief that she needs to undertake those actions herself

1 provided we are not talking about removal of assets that are
2 property of the estate. If the debtor is intending to remove
3 those assets itself, it can do so or, to the extent there's
4 removal and sale and liquidation, then those proceeds need to
5 be held in escrow for the protection of this bankruptcy estate,
6 are we clear on that?

7 MR. ROTH: Right, yes.

8 THE COURT: All right. So then why don't you go back
9 to counsel table and I'll tell you where I am on this then?

10 Again, I think it's too early for me to rule on the
11 motion to dismiss because, as I indicate -- well, let me just
12 say this. I mean, this whole thing looks like the wild wild
13 west. I mean, I've got a party here that's moving and seeking
14 remedies while the stay is in place and obtaining an order that
15 violates the stay. I've got a petitioning creditor who
16 prosecuted a claim that she did not seemingly have standing to
17 proceed with and gave no notice to a Chapter 7 trustee, and
18 I've got a debtor who seemingly does not accept a state court
19 ruling as to the disposition of this property, so happy to have
20 this case on my docket.

21 With that being said, this is a motion that I cannot
22 dispose of until I have Trustee Zebley here to be heard with
23 respect to Ms. Snyder's claim. I would like to also have the
24 answer from U-LOCK in terms of what he intends to do in
25 response to the involuntary petition because if I -- they

1 contest it, I'll need to have an evidentiary hearing on that.
2 If it doesn't, then perhaps the involuntary aspect may be moot,
3 although I guess the timing of the petition date may play a
4 role there. So I am prepared to continue this to a date
5 following June 13th and, unfortunately, I don't have my
6 calendar up right now.

7 In the meantime I am going to grant Ms. Biros limited
8 stay relief for the purpose of engaging in environmental
9 remediation activities with the caveat that the parties are to
10 attempt first to work cooperatively in doing so. It sounds to
11 me like there may be a basis for an agreement for the removal
12 of vehicles from the property, and vehicles that are not assets
13 of this bankruptcy estate can be removed by Ms. Biros without
14 further accounting. If there are vehicles that belong to the
15 bankruptcy estate that are being removed then the parties need
16 to have an acceptable arrangement to either escrow any proceeds
17 received for that or account for them, but I don't want those
18 being removed without some sort of idea of what's going on with
19 respect to those items. And then subsequently to that I'm
20 finding that the May 13th order from the State Court is void in
21 that it was entered after the stay was entered in this case.
22 And then I will reserve for future determination the remainder
23 of the relief that's requested in the motion to dismiss which
24 includes the request for sanctions. I will reserve for a later
25 time what issues may arise due to Ms. Snyder's failure to

1 disclose the Chapter 7 asset and I will also reserve for a
2 later time the issue of what to do if -- with respect to what
3 may appear to be a wilful violation of the stay.

4 So with that, the 13th is a Monday, I am looking at
5 maybe perhaps the afternoon of June 29th, which is a Wednesday.

6 MS. WENRICH: Your Honor, I will not be available at
7 that time, is there anyway we can make --

8 THE COURT: Is it just that -- is it that week or
9 that day?

10 MS. WENRICH: It's the 29th until the 5th of July.

11 THE COURT: I have availability on July the 6th, does
12 that work for Mr. Roth?

13 MR. ROTH: I believe so.

14 MR. OTTO: Your Honor, I'm not available the week of
15 July 4th. I apologize.

16 THE COURT: Well, this is seemingly not the emergency
17 I thought it was. How about July 21st?

18 MS. WENRICH: Your Honor, would I be able to attend
19 via Zoom? I am out of town (indiscernible).

20 May I speak with co-counsel for a minute
21 (indiscernible)?

22 THE COURT: You may. Mr. Roth, does that date work
23 for you?

24 MR. ROTH: July 21st works, yes.

25 MS. WENRICH: Your Honor, Mr. Otto does not need to

1 be here, if we could go back to July 6th if that would work?

2 THE COURT: All right. July 6th, is that okay with
3 you, Mr. Roth?

4 MR. ROTH: I'm sorry, I couldn't hear you.

5 THE COURT: July 6th?

6 MR. ROTH: July 6th?

7 THE COURT: Yes.

8 MR. ROTH: That's fine with me.

9 THE COURT: All right. Ms. Snyder, does July 6th
10 work for you?

11 MS. SNYDER: Yes, Your Honor, it will.

12 THE COURT: All right. So again, for that hearing
13 you will either need to have video capability on a device, so
14 you've got time to make sure that you have a device that can
15 handle that, or otherwise you'll need to be here in the
16 courtroom for that.

17 MS. SNYDER: Okay. Understood, Your Honor. Thank
18 you.

19 THE COURT: All right. I will set this hearing for
20 -- I'll set it for eleven o'clock on July 6th. All right.

21 Based on my statements, are the parties in a position
22 to work out a consent order granting limited stay relief on the
23 basis that I have indicated or do you wish the Court to draft
24 the order itself?

25 MS. WENRICH: Your Honor, could we take ten minutes

1 to talk to opposing counsel and opposing party and see if we
2 would be able to work something out?

3 THE COURT: You're welcome to do that but I have to
4 warn you that I'm going to bring my trial back in. So what
5 you'll have to do then is notify my chambers whether or not
6 you've reached an agreement on an order. I don't need one
7 today. I mean, if you need -- I'll give one or two business
8 days to work out an order and if not then I'll just do my own
9 order. But if you want to have it wrapped up today while
10 you're both here and you're in the courtroom, that's fine. But
11 I'm going to tell you that I'm probably going to bring them
12 back and I may not be able to have another break for -- until
13 about noon or so.

14 MS. WENRICH: Understood, Your Honor. I will -- Mr.
15 Roth, if it's okay with him, we'll talk and I can update
16 chambers or he can be on the call with me while I update
17 chambers as to whether we're able to work it out.

18 THE COURT: All right. And then since this does not
19 relate to -- this relates to stay relief, I mean, Ms. Snyder,
20 you filed a response to the motion for stay of relief but I'm
21 viewing this as an issue between Ms. Biros and U-LOCK so I will
22 require the parties to provide you with a copy of that order
23 but I'm not sure that it's necessary for you to be involved in
24 those discussions since it involves the debtor itself at this
25 point.

1 MS. SNYDER: Okay. Thank you, Your Honor.

2 THE COURT: All right. Anything further we need to
3 address at this point?

4 MR. ROTH: Nothing further.

5 THE COURT: Okay, very good. Well, I have a fairly
6 good understanding of where things are with this case and we
7 will cut through the remaining issues once we have all the
8 necessary parties here. In the meantime I'll give the parties
9 an opportunity to meet and confer about the terms of an
10 acceptable order and if you need additional comments from the
11 Court, like I said, you can hang around. But otherwise, if the
12 parties have agreed on terms of a consent order, then you can
13 submit to me under a certification of counsel, what I'll say is
14 by the the end of -- by four o'clock tomorrow since this is
15 Thursday. The week has kind of gone by. So 4 p.m. tomorrow
16 for a COC. Okay.

17 MS. WENRICH: Thank you, Your Honor.

18 THE COURT: All right. Thank you very much everyone.
19 All right. That concludes the matter --

20 MS. SNYDER: Thank you, Your Honor.

21 THE COURT: -- set before the Court at this time we
22 will take ten-minute recess and come back on the record in Pius
23 Street, and then alert the parties of Pius Street that we will
24 start at 10:30. Thank you.

25 * * * * *

C E R T I F I C A T I O N

I, MYRIAM LOPEZ, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Myriam Lopez
MYRIAM LOPEZ

J&J COURT TRANSCRIBERS, INC.

DATE: June 7, 2022